HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITION No. 20375 OF 2005

Dated 29-11-2005

Between :

1. Sri G. Kartic Kumar, son of Sri G.Anand Kumar, aged 20 years, Occupation : Student, resident of H.No.18-7-526/13, SRT Colony, Kandikal Gate, Uppuguda, Hyderabd.

...petitioner.

And :

1. The Commissioner, Collegiate Higher Education, Government of Andhra Pradesh, Hyderabad and others.

…Respondents.

ORDER :

This writ petition has been filed by the petitioner assailing the punishment imposed

on him for the alleged malpractices committed by him in the examination held on 03-05-2005 and 16-05-2005.

2. The petitioner is a student studying Engineering course in Noor College of Engineering and Technology, Shadnagar, Hyderabad-3rd respondent. The petitioner appeared II year Linear and Digital IC examinations on 03-05-2005. The Invigilator of College found the petitioner copying the material relating to the subject in the examination hall. The answer sheet as well as copying material was seized by the Invigilator after duly following the procedure and the petitioner was sent out of the examination hall. Again on 16-05-2005, the petitioners attended mathematics-II of supplementary II years 1 Semester. He left the examination hall taking away the answer sheets and subsequently returned the same to the examination hall. Thereupon, the answer sheets came to be seized by the Invigilator. The Malpractice Committee met on the respective dates of examination i.e., on 03-05-2005 and 16-05-2005 and recommended punishment for malpractices committed by the petitioner in accordance with the guidelines of J.N.T. University. The Director of J.N.T. University-2nd respondent considered the report of the Malpractice Committee and awarded punishment as follows :

> "The performance in the subject of Linear & Digital IC Applications and in all other subjects of that series is cancelled."
>
> "The performance in the subject of Mathematics-II and in all other subjects of that series is cancelled and debarred for two semesters."

The petitioner assailed punishment on the ground that he was neither put on notice of the malpractices attributed to him nor served with any memo or show-cause notice calling upon him to submit his explanation as to the malpractices alleged against him.

3. The respondents 2 and 3 filed counter-affidavit. It is stated in the counter-affidavit of the 2nd respondent that the petitioner was caught red-handed twice while indulging malpractices and the Invigilator followed the due procedure and seized the copying material and answer sheets. I deem it appropriate to refer paragraphs 4 and 5 of the counter-affidavit and they are thus :

> "4. I submit that the 3rd respondent college followed the malpractice guidelines issued by the University and placed the matter before the Malpractice Committee and the said Committee by duly following the

guidelines came to the conclusion that the petitioner has committed an act of malpractice as the petitioner resorted for highly unwarranted action of taking away the answer sheet from the examination hall etc. Basing on the malpractice committee report forwarded by the 3rd respondent college by considering the report I passed orders by debarring the petitioner for 2 Semester as he committed unwarranted malpractice as stated above."

"5. I submit that contention of the petitioner is that no opportunity was given to him etc., is untenable. Petitioner was caught red handedly twice and resorted for high handed action of taking away the answer script from the examination hall and all these facts speaks for itself and the invigilators followed the due procedure while detecting the malpractice and seized the material red handed. Admittedly petitioner has not pleaded or demonstrated any prejudice by reason of the procedure adopted by us while imposing the impugned punishment. Hence absolutely there are no merits in the case and does not warrant any interference by this Hon'ble Court."

4. The Counter of the 3rd respondent is that the petitioner was caught red-handed on 03-5-2005 and 16-5-2005 while he was indulging in malpractices. It is further stated that the Malpractice Committee met on the respective dates of examination and made recommendations to the 2nd respondent. Paragraph 7 of the counter-affidavit needs to be noted here and it is thus :

"7. In the light of the above, the contention of the petitioner that he was not aware of the reasons behind the passing of the impugned proceedings dated 20-7-2005 and without any reason he had been imposed punishment of being debarred, is without any substance. The petitioner was caught red-handed in the presence of other students on 3-5-2005 copying from the material connected to the subject in an examination hall. On 16-5-2005 with all the students in the examination hall watching, he left the examination hall without any permission and submitted his answer sheet by entering the examination hall just before the conclusion of the examination session."

5. Reply affidavit has been filed by the petitioner.

6. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the 3rd respondent.

7. The learned Counsel for the petitioner submits that the petitioner was not put on notice of the accusation made against him, and therefore, there was no opportunity to him to submit any explanation for the malpractice alleged against him.

He further submitted that the order passed by the 2nd respondent without causing notice on him amounts to violation of the principles of natural justice. Further submission has been made that the University while passing impugned order acted as a quasi judicial authority in which case, the principles of natural justice are required to be followed. In support of his submissions, reliance has been placed on the decisions in BOARD OF HIGH SCHOOL AND INTERMEDIATE EDUCATION, U.P. ALLAHABAD v. GHANSHYAM DAS GUPTA AND ORS.(), A. RAMAKOTESWARA RAO, STUDENT v. THE VICE CHANCELLOR, NAGARJUNA UNIVERSITY, GUNTUR AND ANOTHER (), V. RAMACHANDER G O U D v . CONTROLLER OF EXAMINATIONS, OSMANIA UNIVERSITY, HYDERABAD AND ANOTHER (), THE BOARD OF HIGH SCHOOL AND INTERMEDIATE EDUCATION U.P. AND ORS. v . KUMARI CHITTRA SRIVASTAVA AND ORS. (), SACHIN AGARWAL v. STATE OF U.P. AND ORS. (), MOHD. TUFAIL KHAN v . DIRECTOR OF EDUCATION, U.P. LUCKNOW AND ORS. (), AASMITA PATNAIK v. VICE-CHANCELLOR, UTKAL UNIVERSITY AND ORS. (), S.L. KAPOOR v. JAGMOHAN AND ORS. ().

8. The learned Standing Counsel for the 2nd respondent submits that the 2nd respondent passed the impugned orders basing on the report sent by the Malpractice Committee and in accordance with the guidelines issued by the J.N.T.U. University. He submits that show cause notice is required to be issued in cases of malpractice being detected during the valuation and in other cases, no cause notice is contemplated and therefore, the action of the 2nd respondent is justified and the same cannot be found fault.

9. The learned counsel for the 3rd respondent submits that the seizure of the copying material and answer sheets are done in the presence of the petitioner and therefore, show cause notice is not required and even if show cause notice is issued, it would be an empty formality.

10. The Supreme Court in the 1st cited decision has held that action in cases of examination using unfair means, Committee acts quasi-judicially and principle of audi alteram partem applies. I deem it appropriate to refer paragraph 11 of the cited judgment and it is thus : -

> “11. We thus see that the Committee can only carry out its duties under R.1 (1) by judging the materials, placed before it. It is true that there is

> no lis in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and the examinee; at the same time considering that materials will have to be placed before the Committee to enable it to decide whether action should be taken under R.1 (1), it seems to us only fair that the examinee against whom the Committee is proceeding should also be heard. The effect of the decision of the Committee may in an extreme case blast the career of a young student for life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find under R.1 (1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the Committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in courts. Considering therefore the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under R.1 (1), it seems to us that the Committee must be held to act judicially in circumstances as these. Though therefore, there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the committee on the examinee concerned, must lead to conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its powers under R.1 (1). We are therefore of the opinion that the Committee when it exercises its powers under R.1 (1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee. This view was taken by the Calcutta High Court in Dipa Pal v. University of Calcutta, A.I.R. 1952 Cal. 594 and B.C. Das Gupta v. Bijoyranjan Rakshit, A.I.R. 1953 Cal.212 in similar circumstances and is in our opinion correct."

11. The same judgment has been followed by our High Court in 2nd cited supra. The propositions laid down in the above referred judgment is that opportunity is required to be given to the student before inflicting punishment on him. Admittedly, no opportunity was given to the petitioner before inflicting punishment for the alleged malpractices.

12. In that view of the matter, the writ petition is allowed setting aside the impugned order and directing the 2nd respondent to issue show cause notice to the petitioner and thereafter pass appropriate orders within 15 days from the date of the receipt of explanation, if any. No costs.

Justice B. SESHASAYANA REDDY

Date : 29th Novem

ber, 2005.

Dvs

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